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MM Docket No. 96-95
RM-8787
RM-8838

Released: October 13, 1998

² After the record closed, both Platte and LifeStyle filed Motions to File Supplemental Comments and Supplemental Comments and LifeStyle filed a Motion to File Reply to Supplemental Comments and Reply to Supplemental Comments. The Commission's rules do not contemplate the filing of pleadings beyond the comment and reply comment period set forth in the Notice or in response to the Public Notice announcing the filing of LifeStyle's counterproposal. In this case, the unauthorized pleadings, which concern the issue of whether Platte's reply comments constitute an untimely filed counterproposal, are moot in light of the settlement agreement reached by the two parties. Therefore, they need not be considered herein and are dismissed.

jointly filed a settlement agreement and request for approval of the agreement.³

2. In the jointly filed agreement, LifeStyle withdraws its opposition to the substitution of Channel 295C3 for Channel 295A at Plattsmouth, its counterproposal for the allotment of Channel 295A to Papillion and agrees to the modification of Station KJJC's license to specify operation on Channel 296C2 at Osceola. Platte also agrees to reimburse LifeStyle for the change in its operating channel.

3. Based on the information before us, we believe the public interest would be served by substituting Channel 295C3 for Channel 295A at Plattsmouth, Nebraska, since it could provide the community with its first wide coverage area FM service. In addition, as proposed, we will modify Platte's license for Station KOTD-FM to specify operation on the higher class channel. To accommodate this allotment, we are also substituting Channel 296C2 for Channel 295C2 at Osceola, Iowa, and modifying Station KJJC's license to specify operation on the alternate Class C2 channel.

Technical Summary

4. Channel 295C3 can be allotted to Plattsmouth in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.4 kilometers (11.4 miles) northeast to avoid a short-spacing to Station KTPK, Channel 295C, Topeka, Kansas, and to accommodate Platte's desired transmitter site. Channel 296C2 can be allotted to Osceola and used at Station KJJC's presently licensed transmitter site.⁴

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 7, 1998, the FM

³ Petitioner requested a hearing on the circumstances surrounding the filing of LifeStyle's counterproposal, contending that it constituted an abuse of Commission processes. Specifically, it argues that LifeStyle does not have an interest in applying for the proposed allotment at Papillion but rather filed the counterproposal for the purpose of blocking the Plattsmouth proposal until LifeStyle received an "impermissible" financial settlement. This pleading, and those filed in response by LifeStyle are now moot in light of the agreement between the parties wherein LifeStyle has withdrawn its Papillion counterproposal. The agreement complies with Section 1.4209(j) of the Commission's rules because it stipulates that LifeStyle is not being compensated for the withdrawal of the counterproposal beyond the expenses which it incurred in preparing and prosecuting the counterproposal. LifeStyle provides a financial accounting of the expenses for which it is being compensated for. Therefore, we will accept LifeStyle's withdrawal of its counterproposal.

⁴ The coordinates for Channel 295C3 at Plattsmouth are 41-09-22 North Latitude and 95-47-03 West Longitude. The coordinates for Channel 296C2 at Osceola are 41-01-34; 93-51-43.

Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Osceola, Iowa	296C2
Plattsmouth, Nebraska	295C3

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Platte Broadcasting Company, Inc., for Station KOTD-FM, Plattsmouth, Nebraska, IS MODIFIED to specify operation on Channel 295C3, in lieu of Channel 295A, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of LifeStyle Communications Corporation, for Station KJJC, Osceola, Iowa, IS MODIFIED to specify operation on Channel 296C2 in lieu of Channel 295C2, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KJJC's license, BLH-890308KB, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-890308KB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Division, shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the licensee of Station KJJC, as follows: LifeStyle Communications Corporation, 4 Catherine Circle, Wilbraham, MA 01095.

9. IT IS FURTHER ORDERED, That the counterproposal filed by LifeStyle Communications Corporation (RM-8838) to allot Channel 295A to Papillion, Nebraska, IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau